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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(El Dorado)----

THE PEOPLE, Plaintiff and Respondent, v. DANIELLE MARIE WEED, Defendant and Appellant.	C085254 (Super. Ct. No. P15CRF0067)

Defendant Danielle Marie Weed and four others visited murder victim Pete Thomas late one night in 2015. They took several items of his property and left him with a fatal stab wound to the chest. One member of the group, Daisy Garcia, later went to the police and told them part of what had happened that night. In a separate trial, a jury

found defendant guilty of first degree murder (Pen. Code, § 187)[1] and the trial court sentenced her to 25 years to life in prison.[2]

On appeal, defendant contends the trial court prejudicially erred in failing to instruct the jury that the testimony of Maryann Curtis, an in-custody informant, required corroboration. (CALCRIM No. 336.) She further contends that if the judgment is not reversed, the matter should be remanded for an opportunity for her to make a record for a youth parole hearing pursuant to *People v. Franklin* (2016) 63 Cal.4th 261 (*Franklin*). The People concede the instructional error, but contend it was harmless. They concede remand is appropriate. We agree with the People and affirm the judgment but remand for a *Franklin* hearing.

FACTS

Pete Thomas and his brother Byron owned 26 acres of land outside of Placerville.[3] Byron and his son lived in a manufactured house on the property and Pete lived in a trailer. Both men were retired. Pete had a methamphetamine problem that had worsened since he retired. Byron had issues with certain people who visited Pete, particularly those Pete let stay on their land; the police came sometimes looking for these visitors. In particular, Byron did not like Brandy Rogers, who visited regularly and had stayed there for several months. Byron told Rogers she could not stay there and had words with Pete about it.

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[1] Further undesignated statutory references are to the Penal Code.

[2] Three others in the group were convicted of murder in two separate trials: Raul Gonzalez with Roberto Barrera, and Nalana Omega (alone). Their convictions are on appeal. (*People v. Barrera et al.*, C085232; *People v. Omega*, C085437.)

[3] To avoid confusion, the Thomas brothers are referred to by their first names.

Pete was generous and helped others. One of those he helped was defendant, who had gone to high school with Rogers. Pete gave defendant things and a place to stay; they had a sexual relationship when she stayed with him. Pete owned several guns, including a Glock handgun. He also had jewelry, a laptop computer, and a cell phone. He had a car he allowed Rogers to use.

On February 3, 2015, Rogers and a man came to Byron's house and said something had happened to Pete; they had already called 911. Byron went to the trailer and saw Pete dead on the couch with a puncture wound on his chest. Pete bled to death from the stab wound.

Officers searched the trailer and found no knife or other weapons. Pete's computer, cell phone, and the keys to his car were missing. The police collected two drinking glasses and a Styrofoam cup on the table by the couch for fingerprints and DNA analysis.

Alonso Aguilar, a detective with the sheriff's office, knew Daisy Garcia through a family connection. Garcia had a narcotics problem and had asked him for assistance in the past. Between February 8 and 15, 2015, she reached out to Aguilar via Facebook. She wanted to talk to him about a homicide. Aguilar was on vacation in Mexico and unaware of Pete's murder. He told her to call him when he returned. When she did, Aguilar spoke to a supervisor who asked him to arrange a meeting among Aguilar, Garcia, and Detective Netashia Perez.

Garcia, aged 25 at the time of trial, had problems with methamphetamine and heroin since she was a teenager. She had been living in a flop house where various people stayed and used drugs. Garcia had known Raul Gonzalez and Roberto Barrera for years and was close with them. Gonzalez was dating Nalana Omega and they had moved into the flop house a month before the killing. Garcia did not like Omega and was scared of her. Gonzalez and Omega came to Garcia's room and created conflict with her.

Before the killing, Garcia went with Gonzalez and Omega as they stole a car. Omega talked about burglarizing houses to get money for drugs. Once, Gonzalez and Omega came by and dumped bags of jewelry and coins on the floor of Garcia's room.

On January 31, 2015, Garcia was in her room with Gonzalez, Omega, Barrera, and a man she believed was Gonzalez's uncle; they were all using methamphetamine. Omega was taking pictures of herself holding a gun. The group left and dropped off Gonzalez's uncle. They later stopped outside a liquor store and picked up defendant. Omega was talking about an old man; she called him a "chomo," meaning a child molester. Defendant talked about an old man with jewelry. When she said she was going to kill him, Gonzalez objected saying, "that's not going to happen."

Before they reached Pete's, they stopped and Gonzalez got a shotgun from the back of the car and gave it to Barrera. At Pete's, Barrera stayed in the car with the gun. The others went inside and used drugs with Pete. They talked about buying an ounce of methamphetamine and Pete called someone to arrange it. Omega and Garcia drank from the same glass.

Defendant walked around the trailer looking for jewelry and putting it in her pockets. The conversation turned to the Glock. Pete did not want to take it out or sell it, but when Garcia returned from the restroom he had it out. Gonzalez asked Garcia to get Barrera. She went to the car and told Barrera that Gonzalez wanted him. She stayed in the car.

Defendant made two trips to the car with Pete's laptop computer and jewelry. A few minutes later, defendant, Gonzalez, Omega, and Barrera ran to the car. Everyone was freaking out. Defendant had a glove on and was holding a knife. Omega took the knife and wrapped it in clothing. Gonzalez said, "What did that crazy bitch do?" Defendant said Pete was a child molester and deserved to die.

A day or two later, defendant admitted to Garcia that she had stabbed Pete. Garcia left the flop house to get away from defendant, Omega, and Gonzalez. She reached out to Aguilar.

Defendant was charged with Pete's murder, together with Omega, Gonzales, and Barrera. There were three separate trials; defendant was tried alone. At defendant's trial, Garcia testified and claimed she received no benefit for her testimony; it was the right thing to do. She had not received a reduced sentence and was currently in jail for violation of felony probation; she had not been charged with any crime in connection with Pete's murder.

The People offered a variety of evidence to corroborate Garcia's testimony. Jeremy Gannon was a former drug dealer who had sold drugs to Pete. Gannon testified that the evening of January 31, 2015, Pete called him asked the price for half an ounce of methamphetamine, an amount that was more than Pete's usual purchase. Pete said he had people visiting. Gannon agreed to meet him at Bucks Bar for the purchase that same evening; he waited hours but Pete never showed up. Gannon called Pete, but there was no answer. Cell phone records confirmed these calls.

Charles Hernandez owned the flop house and testified that Garcia had lived there; Hernandez recalled that Omega and Gonzalez and had "muscled their way" from the couch into Garcia's room; they "wanted the room" and were "intimidating" Garcia. Efren Zamora, Gonzalez's godfather, testified he was initially with the group of four, including defendant, that night. He had a bad feeling about what the group was going to do and had them drop him off.

The police discovered a variety of property consistent with burglaries. A search of Barrera's residence revealed jewelry, coins, and a gun. During a traffic stop of Gonzalez, Omega, and two others, the police found a laptop computer in the trunk and a Glock handgun in Omega's purse. There was a revolver in a backpack. There was a shotgun in the attic of the flop house. A trunk contained electronics, jewelry, and papers. Garcia

helped Detective Perez find the car used the night of the killing, a silver two-door Hyundai registered to Efren Zamora.

DNA analysis revealed a profile matching Pete's on one of the glasses taken from the trailer. A second glass had four contributors and no further analysis could be made. Defendant's DNA profile was consistent with a major contributor to the DNA on the Styrofoam cup and Omega could not be excluded as a minor contributor.

The final witness at trial was Maryann Curtis, who had been housed in the jail cell next to defendant. Defendant told her that someone was trying to pin a murder on her, and made a stabbing motion. Defendant gave various versions of events: she was not there; they all were there; they went to do a drug deal and get a gun she wanted; she was going to steal a gun; and the victim was a pedophile and they knew they were going to kill him. Curtis claimed she had received no leniency on her pending case for talking to Detective Perez or the district attorney. She had not been subpoenaed; she came forward voluntarily.

No evidence was offered by the defense.

DISCUSSION

I

Failure to Instruct on Corroboration Requirement

Defendant contends the trial court committed reversible error because it failed to instruct the jury that the testimony of Curtis, an in-custody informant, must be corroborated. She contends this error was of constitutional magnitude and is subject to the harmless error standard of *Chapman v. California* (1967) 386 U.S. 18. She asserts the error was not harmless beyond a reasonable doubt.

The People concede the instructional error but urge the proper standard for harmless error is the *Watson* standard (*People v. Watson* (1956) 46 Cal.2d 818, 836). The People assert that under this standard the error is harmless. We agree.

The corroboration requirement for in-custody informants is set out in section 1111.5: "(a) A jury or judge may not convict a defendant, find a special circumstance true, or use a fact in aggravation based on the uncorroborated testimony of an in-custody informant. The testimony of an in-custody informant shall be corroborated by other evidence that connects the defendant with the commission of the offense, the special circumstance, or the evidence offered in aggravation to which the in-custody informant testifies. Corroboration is not sufficient if it merely shows the commission of the offense or the special circumstance or the circumstance in aggravation. Corroboration of an in-custody informant shall not be provided by the testimony of another in-custody informant unless the party calling the in-custody informant as a witness establishes by a preponderance of the evidence that the in-custody informant has not communicated with another in-custody informant on the subject of the testimony. [¶] (b) As used in this section, 'in-custody informant' means a person, other than a codefendant, percipient witness, accomplice, or coconspirator, whose testimony is based on statements allegedly made by the defendant while both the defendant and the informant were held within a city or county jail, state penal institution, or correctional institution. Nothing in this section limits or changes the requirements for corroboration of accomplice testimony pursuant to Section 1111." CALCRIM No. 336 is the pattern instruction for this situation.

Curtis testified about her conversations with defendant while both were in the El Dorado County Jail. Thus, she qualified as an in-custody informant and the trial court had a duty to instruct sua sponte on the corroboration requirement. (*People v. Davis* (2013) 217 Cal.App.4th 1484, 1489 (*Davis*).)

When the trial court fails to instruct on the corroboration requirement for accomplice testimony, the standard of prejudice is "sufficient corroborating evidence." (See *People v. Gonzales and Soliz* (2011) 52 Cal.4th 254, 303.) In *Davis, supra,* 217 Cal.App.4th 1484, at pages 1489-1490, the appellate court rejected the use of this

standard for in-custody informants, holding the corroboration requirement for in-custody testimony is more stringent than the corroboration requirement for accomplice testimony. For testimony of an in-custody informant, there must be evidence that "connects" defendant with the crime (§ 1111.5, subd. (a)), while the corroboration for accomplice testimony requires only evidence that "tends to connect" defendant with the crime (§ 1111). The *Davis* court found the *Watson* standard applied. "In other words, we may reverse the judgment only if we are able to say it is reasonably probable the jury would have reached a result more favorable to defendant if the trial court had instructed that before the jury could convict defendant based solely on the testimony of Cristillo, an in-custody informant, there must be evidence that corroborates that testimony, i.e., that connects defendant to the commission of the crime." (*Davis,* at p. 1490.)

Defendant contends *Davis* is not controlling on the harmless error standard because it did not consider whether the instructional error might be federal constitutional error and " 'cases are not authority for propositions not considered.' " (*People v. Avila* (2006) 38 Cal.4th 491, 566.) She contends the error deprived her of a fair trial and lessened the People's burden of proof; therefore, prejudice must be assessed under the *Chapman* standard of harmless beyond a reasonable doubt. Defendant declares, "Permitting a conviction to be returned solely on the basis of evidence that is legislatively declared to be insufficient to establish guilt beyond a reasonable doubt is federal constitutional error under the Fourteenth Amendment." She cites to *In re Miguel L.* (1982) 32 Cal.3d 100, pages 110-112 (*Miguel L.*).

In *Miguel L.*, a minor was adjudicated a ward of the court upon a finding he committed burglary. The case against him rested *solely* on the repudiated extrajudicial accusations of an accomplice. (*Miguel L., supra*, 32 Cal.3d at p. 102.) At the time, such

statements were insufficient alone to convict someone.[4] Because the *only* evidence against the minor was evidence deemed insufficient for a conviction, our high court found that affirming the wardship adjudication would violate due process. (*Id*. at p. 110.)

Miguel L. does not aid defendant. This is not a case where the only evidence against defendant comes from an uncorroborated and dubious source. While Curtis's testimony was justifiably to be treated with suspicion because she was a jailhouse informant, it was far from the only evidence against defendant, nor, as we explain, was it uncorroborated.

We agree with *Davis* that the *Watson* standard of harmless error applies here. Generally, California courts employ the reasonable probability standard of *Watson* to assess trial court failures to give necessary instructions sua sponte. (See *People v. Breverman* (1998) 19 Cal.4th 142, 178.) Federal law does not require that juries be instructed on the corroboration of accomplice testimony. (*United States v. Augenblick* (1969) 393 U.S. 348, 352 ["When we look at the requirements of procedural due process, the use of accomplice testimony is not catalogued with constitutional restrictions."]; accord *Laboa v. Calderon* (9th Cir. 2000) 224 F.3d 972, 979 [The corroboration rule for accomplice testimony "is not required by the Constitution or federal law."].) There is no reason to think the corroboration rule for in-custody informants is different. "[S]tate laws requiring corroboration do not implicate constitutional concerns that can be addressed on habeas review." (*Harrington v. Nix* (8th Cir. 1993) 983 F.2d 872, 874.)

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[4] *Miguel L.* relied on *People v. Gould* (1960) 54 Cal.2d 621 at page 631 ["An extra-judicial identification that cannot be confirmed by an identification at the trial is insufficient to sustain a conviction in the absence of other evidence tending to connect the defendant with the crime"]. Our Supreme Court overruled *Gould* on this point in *People v. Cuevas* (1995) 12 Cal.4th 252 at page 257, holding that the sufficiency of out-of-court identification is determined by the substantial evidence test.

Defendant contends the instructional error was prejudicial under either the *Chapman* standard or the *Watson* standard. But she recognizes that the testimony of an in-custody informant *may be corroborated* by the testimony of an accomplice. "[S]ection 1111.5 should not be read to preclude an accomplice from corroborating an in-custody informant's testimony. The Legislature could have easily included such a prohibition when enacting section 1111.5. That the Legislature prohibited corroboration by another in-custody informant except under certain circumstances, but declined to prohibit corroboration by an accomplice, strongly suggests the Legislature did not intend to prohibit the latter." (*People v. Huggins* (2015) 235 Cal.App.4th 715, 719.)

Garcia's testimony corroborated Curtis's testimony in ways that connected defendant to the crime. Both Garcia and Curtis spoke about the crime as involving methamphetamine and the coveted Glock. Both testified to the proffered justification for the killing, that the victim was a child molester who deserved to die. Curtis testified defendant made a stabbing motion when she spoke of the murder, and Pete died from a stab wound to the chest. While the DNA evidence from the glasses that were found together near Pete's body was not conclusive, it suggested that defendant, Omega, and Pete were drinking together that night with others, further connecting defendant to the crime.

Defendant focuses on the credibility problems of both Garcia and Curtis and argues the jury would have been leery of cross-corroboration where there was little or no other evidence connecting defendant to the crime. " 'Generally, "doubts about the credibility of [an] in-court witness should be left for the jury's resolution." ' [Citation.] 'Except in . . . rare instances of demonstrable falsity, doubts about the credibility of the in-court witness should be left for the jury's resolution.' " (*People v. Hovarter* (2008) 44 Cal.4th 983, 996.) Both Garcia and Curtis were cross-examined as to their credibility and about their possible incentives to lie. Finally, as discussed, the People provided significant corroborating evidence for Garcia's testimony.

On this record we find the instructional error harmless. It is not "reasonably probable the jury would have reached a result more favorable to defendant if the trial court had instructed that before the jury could convict defendant based solely on the testimony of [Curtis], an in-custody informant, there must be evidence that corroborates that testimony, i.e., that connects defendant to the commission of the crime." (*Davis, supra,* 217 Cal.App.4th at p. 1490.)

II

Remand for Franklin *Hearing*

Defendant contends the case must be remanded for the opportunity to make a record of information relevant to her eventual youth offender parole hearing, as set forth in *Franklin, supra*, 63 Cal.4th 261. The People concede a limited remand is appropriate as defendant is now entitled to a youth offender parole hearing due to a subsequent amendment to section 3051.

At the time of the murder, defendant was 23 years old. She was sentenced on July 14, 2017. At that time, a youth offender parole hearing was available only to a prisoner who was under 23 years of age at the time of his or her controlling offense. (Former § 3051, subd. (a)(1); Stats. 2015, ch. 471, § 1.) The Legislature subsequently amended section 3051 to provide a youth offender parole hearing for anyone 25 years of age or younger when he or she committed the controlling offense. (Stats. 2017, ch. 675, § 1.)

Section 3051, subdivision (b)(3) now provides: "A person who was convicted of a controlling offense that was committed when the person was 25 years of age or younger and for which the sentence is a life term of 25 years to life shall be eligible for release on parole by the board during his or her 25th year of incarceration at a youth offender parole hearing, unless previously released or entitled to an earlier parole consideration hearing pursuant to other statutory provisions."

In *Franklin*, a 16-year-old defendant shot and killed another teenager; he was convicted of murder with a firearm enhancement and received the statutorily mandated sentence of life in prison with the possibility of parole in 50 years. (*Franklin, supra*, 63 Cal.4th at p. 268.) Our Supreme Court found recent legislation that granted Franklin a parole hearing during his 25th year in prison had mooted his Eight Amendment challenge to his sentence. (*Id.* at pp. 276-277.)

The *Franklin* court remanded "the matter to the trial court for a determination of whether Franklin was afforded sufficient opportunity to make a record of information relevant to his eventual youth offender parole hearing." (*Franklin, supra*, 63 Cal.4th at p. 284.) The court explained, "If the trial court determines that Franklin did not have sufficient opportunity, then the court may receive submissions and, if appropriate, testimony pursuant to procedures set forth in section 1204 and rule 4.437 of the California Rules of Court, and subject to the rules of evidence. Franklin may place on the record any documents, evaluations, or testimony (subject to cross-examination) that may be relevant at his eventual youth offender parole hearing, and the prosecution likewise may put on the record any evidence that demonstrates the juvenile offender's culpability or cognitive maturity, or otherwise bears on the influence of youth-related factors. The goal of any such proceeding is to provide an opportunity for the parties to make an accurate record of the juvenile offender's characteristics and circumstances at the time of the offense so that the Board, years later, may properly discharge its obligation to 'give great weight to' youth-related factors (§ 4801, subd. (c)) in determining whether the offender is 'fit to rejoin society' despite having committed a serious crime 'while he was a child in the eyes of the law' [citation]." (*Franklin,* at p. 284.)

Defendant is entitled to an opportunity to supplement the record with information relevant to her eventual youth offender parole hearing. Although she "could have introduced such evidence through existing sentencing procedures, . . . she would not have had reason to know that the subsequently enacted legislation would make such evidence

particularly relevant in the parole process." (*People v. Rodriquez* (2018) 4 Cal.5th 1123, 1131.) On remand, the trial court shall provide defendant and the prosecution an opportunity to supplement the record with information relevant to defendant's eventual youth offender parole hearing. (*Franklin*, *supra*, 63 Cal.4th at p. 284.)

DISPOSITION

The judgment is affirmed. The matter is remanded to afford both defendant and the People an adequate opportunity in accordance with *Franklin, supra*, 63 Cal.4th 261, to make a record of information that will be relevant to the parole authority as it fulfills its statutory obligations under sections 3051 and 4801.

/s/
Duarte, J.

We concur:

/s/
Raye, P. J.

/s/
Robie, J.